Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

October Term, 1995

JAMES R. BLACKSTON

Petitioner,

vs.

PAUL HEFFLER, et al.,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the 11th Circuit

PETITION FOR A WRIT OF CERTIORARI

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85 pp

QUESTIONS PRESENTED

The Walker County Department of Human Resources, Director Ronald Gilbert, established a "policy" that forbids the Department from returning illegally or prematurely withheld property to non-custodial mothers and fathers in Alabama. The questions presented is whether this policy is constitutional under the Due Process Clause of the Fourteenth Amendment and constitutes an "illegal taking."

The Eleventh Circuit sanctioned a ruling by the District Court that states, "Title IV-D of the Social Security Act does not create an enforceable right for the plaintiff/appellant." (App. infra. 30a). The question presented is whether the decision conflicts with *Sullivan v. Stroop*, et. al. 496 U.S. 478 (1990) and numerous other circuit's decisions concerning private rights under Title IV-D and thus violates the Fourteenth Amendment of the United States Constitution.

The principle issue in this case involves, subsequent and continuous misconduct by a government entity. The question presented is whether the District Court's decision, and the

Eleventh Circuit's affirmation, conflict with this Court's decision in *Hardin v. Straub*, 490 U.S. 536, (1989) and *Ford v. Ford*, 371 U.S. 187 (1962) and thus violates the Fourteenth Amendment of the United States Constitution.

The District Court contends that the petitioner's § 1983 claim deserved dismissal under this Court's Rooker/Feldman abstention doctrine. The question presented is whether the decision conflicts with numerous cases that define the Rooker/Feldman Doctrine and more particularly *Johnson v. De Grandy*, 114 S. Ct. 2647 (1994).

The District Court destroyed the transcript of a hearing in this case and refused to approve the plaintiff's "Statement of the Proceedings." or allow a hearing on the evidence. Without a fair opportunity, the petitioner cannot fairly and reasonably pursue his claims or appeal. The questions presented is whether the "dastardly scheme" to undermine a pro se litigants case violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution and should a judge asked to recuse herself sit in judgment in her own case?

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PETITION FOR A WRIT OF CERTIORARI

James R. Blackston respectfully petitions for a writ of certiorari to review the judgment, and the Eleventh Circuit's affirmation, of the United States District Court for the Northern District of Alabama, Jasper Division.

OPINIONS BELOW

The decision of the United States District Court for the Northern District of Alabama, (App., infra, 14a-43a) is unreported. The decision of the U. S. Court of Appeals for the Eleventh Circuit is unreported. (App. infra, 1a-2a).

STATEMENT OF JURISDICTION

The District Court entered its judgment on September 24, 1993. The U. S. Court of Appeals for the Eleventh Circuit denied review on May 18, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

No State shall ... deprive any persons of life, liberty, or property without due process of law.

CODE OF FEDERAL REGULATIONS INVOLVED

45 C.F.R. § 303.100(a)(10) provides:

The State must have procedures for promptly refunding to

absent parents amounts which have been improperly withheld.

STATEMENT OF THE CASE

This petition raises fundamental questions concerning the power of the state to illegally confiscate a citizen's property and refuse to return the confiscated property in accordance with a stated "policy". The policy constitutes the "custom and policy" of Walker County Department of Human Resources. The execution of the stated "policy" is responsible for "inflicting the injury," and thus is "the moving force of the constitutional violation." As will be discussed below the custom and policy leads to the extension of criminal sanctions to the internecine conduct of child support collections procedures and has led to the enactment of statutes lacking constitutionally sufficient standards of due process protection. In Alabama, this has resulted in a statutory scheme that permits the state to confiscate a non custodial mother or father's property without notice or hearing and subsequently retain the confiscated property for the state's use. Alabama's statutory

scheme in conjunction with the Walker County Department of Human Resources' "custom and policy" conflicts in principle with numerous decisions of this Court and constitutes a severe diminution of due process protection traditionally available where conduct is subjected to criminal penalty and extends criminal sanctions to purely civil actions.

A. The Walker County DHR's Illegal "Custom and Policy".

On November 27, 1991, James R. Blackston, a citizen of Jasper, Walker County, Alabama, attempted to recover an over payment of child support from the Walker County Department of Human Resources, the child support collection agent for the State of Alabama.

The Walker County DHR, Director, Ronald Gilbert, refused to refund Blackston's property, stating, "Refunds are against our policy."

In Alabama over zealous child support collection agencies are prematurely and illegally confiscating property for child support that is not actually owed. In the event, the above

occurs Alabama does not have a remedy whereby a party can recover the illegally confiscated property. Indeed, the stated "custom and policy" of the State's collection agency is explicitly "not to allow refunds."

The Walker County DHR's "custom and policy" does not comply with 42 U.S.C. § 666(b) and 45 C.F.R. § 303.100(a)(10), and denies citizens due process.

B. Constitutional Requirements of Due Process

This case is most readily resolved under a core requirement of due process, the right to be heard. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). It is elementary that "a fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955). A necessary component of a fair trial is an impartial judge. See ibid.; *Tumey v. Ohio*, 273 U.S. 510, 532 (1927); *Weiss v. United States*, 114 S.Ct. 752 (1994).

The right to prior notice and a hearing is central to the Constitution's command of due process. "The purpose of this

requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment -- to minimize substantively unfair or mistaken deprivations of property. . . . *Fuentes v. Shevin*, 407 U.S., at 80-81 (1972); *United States v. James Daniel Good Real Property*, 114 S.Ct. 492 (1993).

Ronald Gilbert's refusal to return James R. Blackston's property, under his stated "custom and policy", deprived Blackston of a basic right to notice and a hearing before taking his property.

Blackston's property was not returned and remains in the possession of the Walker County Department of Human Resources today. The entire summation of this case can be found in the answer to one question. Why is the Walker County Department of Human Resources, after five (5) years, still in possession of Blackston's property?

C. Course of Proceedings

On May 17, 1991, the Walker County, Alabama, Circuit Court awarded James R. Blackston an offset of $2,200.00 for support of the oldest child. (App. infra, 20a).

On November 27, 1991, James R. Blackston attempted to recover the above $2,200.00, wherein, the Walker County Department of Human Resources, established the unconstitutional "custom and policy" that denied him a refund of the illegally confiscated property.

This Cause of Action was filed in the U. S. District Court on October 7, 1992.

On a Summary Judgment Motion to Dismiss, the District Court issued an Order, **dismissing with prejudice**, the pro se claims against all defendants on September 24, 1993. (App., infra, 14a).

The District Court denied James R. Blackston's Motion to Amend or Reconsider on November 01, 1993. (App., infra, 3a).

The United States Court of Appeals for the Eleventh

Circuit affirmed the District Court's decision May 18, 1995. (App. infra. 1a).

REASONS FOR GRANTING THE WRIT

I. The Decision of the U.S. District Court, and the Eleventh Circuit's Affirmation, Conflicts in Principle with Numerous Decisions of this Court that have Struck Down Governmental Actions that State a "Custom and Policy" and Deprive a Citizen of Due Process.

In *Kentucky v. Graham*, 473 U.S. 159 (1985), the Court sought to eliminate lingering confusion about the distinction between personal- and official-capacity suits. The Court emphasized that official-capacity suits "'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" Id., at 165 (quoting *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690, n. 55 (1978)). When an official sued in her official capacity in federal court dies or leaves office, her successor automatically assumes her role in the litigation. See Fed. Rule Civ. Proc.

25(d)(1); Fed. Rule App. Proc. 43(c)(1); this Court's Rule 35.3. Because the real party in interest in an official-capacity suit is the governmental entity and not the named official, "the entity's 'policy or custom' must have played a part in the violation of federal law." *Graham*, supra, at 166 (quoting *Monell*, supra, at 694). 473 U.S., at 167. *Hafer v. Melo*, 112 S.Ct. 358 (S. Ct. 1991)

Personal-capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law. Thus, "on the merits, to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." Id., at 166. *Hafer v. Melo*, 112 S. Ct. 358 (S. Ct. 1991).

In addition, the District Court misinterpreted *Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989).* (App, infra, 23a). In *Will*, the Court held that state officials "acting in their official capacities" are outside the class of "persons" subject to

liability under 42 U.S.C. § 1983. 491 U.S., at 71. The District Court takes this language to mean that § 1983 does not authorize suits against state officers for damages arising from official acts. (App. infra. 23a). The Supreme Court rejected this reading of *Will* and held that state officials sued in their individual capacities are "persons" for purposes of § 1983. *Hafer v. Melo*, 112 S. Ct. 358 (S. Ct. 1991) This Court's decision in *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), turned in part on the differences between personal- and official-capacity actions.

Blackston challenged the government entity's "custom and policy", in this case, that played a part in the violation of federal and constitutional law. *Kentucky*, Supra @ 165.

II. The Decision of the U.S. District Court, and the Eleventh Circuit's Affirmation, Conflicts in Principle with Numerous Decisions of this Court that Condemns Actions by State Officials that Constitute "On Going Misconduct."

The District Court refused to address petitioner's issue

that the conduct complained of was "subsequent and ongoing misconduct by government officials." The District Court's decision is contrary to this Court's decision in *Hardin v. Straub*, 490 U.S. 536, 542 (1989). Although Hardin deals with a Statute of Limitations, this Court unequivocally stated, "In the event an official's misconduct is ongoing, the plaintiff will have an interest in enjoining it . . ." *Hardin*, @ 542. Gilbert and the Walker County DHR's "custom and policy" that refused to return Blackston's property constitutes "ongoing misconduct." Court's that refuse to consider "ongoing misconduct" defeat "the settled § 1983 policy of deterring officials' unconstitutional behavior." *Hardin* @ 542.

The District Court's decision is contrary to this Court's decision in *Ford v. Ford*, 371 U.S. 187, 191(1962). In a Domestic Relations Court of Greenville County, "It was further submitted that the Juvenile and Domestic Relations Court must recognize, in accordance with the full faith and credit clause of the Constitution of the United States, the agreed Order of

Dismissal of the Virginia Court and that such was res judicata, unless there was evidence of **subsequent misconduct** on the part," of one of the parties. *Ford v. Ford*, 371 U.S. 187, 191(1962).

The Walker County DHR's "custom and policy" is deeply rooted and long standing and without judicial relief, the respondents will be free to continue their illegal conduct. *United States v. W. T. Grant*, 345 U.S. 629, 632 (1944).

III. The Decision of the U.S. District Court, and the Eleventh Circuit's Affirmation, Conflicts with this Court's Decision concerning enforceable rights under Title IV-D of the Social Security Act.

In determining whether a family's income disqualifies it from receiving benefits under the Aid to Families With Dependent Children (AFDC) program of Part A of Title IV of the Social Security Act, this Court in *Sullivan v. Stroop*, et. al. 496 U.S. 478 (1990), granted the Writ of Certiorari to the Fourth Circuit.

Respondents were custodial parents receiving AFDC benefits who were aggrieved by the implementation of the DEFRA amendments. They sued in the U.S. District Court for the Eastern District of Virginia challenging Secretary of Health and Human Services interpretation of § 602(a)(8)(A)(vi) on statutory and constitutional grounds. The District Court granted summary judgment for respondents on the basis of their statutory challenge and thereby avoided reaching the constitutional challenge. *Sullivan v. Stroop*, Supra @ 480.

This Court conclusively found that Title IV-D, contained in Title IV of the Social Security Act, 42 U.S.C. § 601-679a, as its heading discloses, establishes a unified program of grants "for Aid and Services To Needy Families With Children And For Child-Welfare Services" to be implemented through cooperative efforts of the States and the Federal Government. The statute also makes plain that Congress meant for the Title IV-D Child Support program to work in tandem with the AFDC program which constitutes Part

A of Title IV, 42 U.S.C. §§ 601-615. *Sullivan*, Supra @ 483.

The suit involved the very essence of Title IV-D - child support. Allowing the suit to progress from the Fourth Circuit to the Supreme Court conclusively certifies that Title IV-D does provide for an enforceable right. Indeed, this Court has spoken - stare decisis.

In determining a statute's "private right of action" the Tenth Circuit found, a hospital's receipt of federal funds under Hill-Burton Act [42 USC §§291 et seq.; imposes a clear obligation to dispense a reasonable amount of free hospital services to indigent, and even if such contractual obligation did not exist, the Act **impliedly** creates a civil remedy for those clearly within its area of protection, and plaintiffs, who were members of class of medically indigent residents of the area served by hospital, were clearly within Act's protection. *Euresti v Stenner*, 458 F2d 1115 (10th Cir. 1972).

The Walker County DHR receives federal funds in the operation of the Title IV-D program equal to fourteen per cent

on every dollar collected from non custodial mothers and fathers. A private right of action is implied by 45 C.F.R. 303.100, wherein the state, through its county collection agencies, **must** refund overpayment of child support. Over paid child support directly affects the private property of Alabama citizens. The Walker County DHR's policy, "not to allow refunds," contradicts federal law, is logically incongruous, and leaves no one to enforce the rights of private parties.

Title IV-D was passed to ensure that AFDC recipients would be supplied sufficient services when needed, and it is not decisive that language of Act included no explicit indication that AFDC recipients were to have right to enforce Act's provisions; **civil remedy may be implied for those clearly within protective realm of legislation or regulations in public interest**; implication of such right is not dependent upon existence of formal contractual relationship. Cf. *Euresti*, Supra.

Again the Fifth Circuit found that in determining an individual's "private rights" under a federal law that although

Act does not expressly provide for a private civil remedy as means of enforcing its provisions, Act does provide **implied authorization** for such remedy. *Saine v Hospital Authority of Hall County*, 502 F2d 1033 (5th Cir. 1974).

Again, this Court in *Wilder v. Virginia Hospital Assn.*, 496 U.S. 498 (1990), determined that the reimbursement provision of the Boren Amendment "was intended to benefit" the plaintiff providers of Medicaid services 496 @ 510. Analogous to *Wilder* a state's plan for child support enforcement does not simply express a "congressional preference" for reasonable and adequate reimbursement rates; rather, it imposes a "binding obligation" on the State to establish and maintain provision for reimbursement of overpayment of child support. Id., @ 512. and C.F.R. § 303.100(10).

The District Court based its decision on *Wehunt v. Ledbetter*, 875 F.2d 1558, 1563 (11th Cir. 1989), (App. infra. 30a), in denying petitioner's "private right of action" under Title

IV-D of the Social Security Act.

Again, the Eighth Circuit found that Congress enacted 42 USCS §651 et seq. to benefit putative plaintiffs such as class member claiming denial of child support enforcement services directly traceable to state's refusal to assist them in obtaining child support from absent fathers living within Indian reservations. *Howe v Ellenbecker* 8 F3d 1258 (8th Cir. 1993), cert. denied 114 S.Ct 1373 (1994).

Again, the Fourth Circuit found a Motion of HHS Secretary to dismiss state's petition for judicial review of agency denial of federal re-imbursement for certain child support program expenditures made by state, representing federal government's share of interest earned on child support obligations collected by state's Department of Social Services pursuant to Child Support Enforcement Act, will be sustained, because agency's order is not properly before federal Court of Appeals inasmuch as it represents disallowance determination that is not subject to direct review under 42 USCS §1316. *South*

Carolina Dept. of Social Services v Bowen 866 F2d 93 (1989, CA4).

A mother's §1983 claim in the Tenth Circuit, against county social services department for improper accounting and distribution of court-ordered child support payments will not be dismissed, where government collection and administration of such payments is provided for by Title IV-D (42 USCS §§ 651 et seq.), because statutory scheme with express purpose of improving enforcement of support obligations owed to custodial parents and their children creates rights privately enforceable under §1983. *Behunin v Jefferson County Dept. of Social Services* 744 F Supp 255 (1990, DC Colo).

The District Court's decision and the Eleventh Circuit's decision in *Wehunt*, Supra, clearly conflicts with this Honorable Court's precedent in *Sullivan*, Supra, *Wilder*, Supra and the language of the Fifth, Eighth and Tenth Circuits.

IV. The Decision of the U.S. District Court and the Eleventh Circuit's affirmation conflicts with decisions that interpret

the Rooker-Feldman Doctrine and more particularly Johnson v. De Grandy, 114 S.Ct. 2647, (1994).

The invocation of Rooker/Feldman is inapt here, for unlike Rooker or Feldman, defendants Paul Heffler and Ronald Gilbert were not a party in any state court proceeding. The petitioner was in no position to ask this Court to review the state court's judgment and has not directly attacked it in this proceeding. Cf. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 468, and n.2, 472, and n.8 (suing District of Columbia Court of Appeals); *Rooker v. Fidelity Trust Co.* 263 U.S. 413, 414, (seeking to have state court's judgment declared null and void). The petitioner merely seeks to litigate his § 1983 case for the first time and his claims are properly before the federal courts. Cf. *Johnson v. De Grandy*, 114 S.Ct 2647, (1994).

The State of Alabama uses child support and related issues to destroy the family's integrity and drive the non-custodial parent completely out of his child's life. The state's

desire to accomplish this scheme is so strong, that the state holds closed meetings when it decides child support issues under the Title IV-D program and refuses to place a proper non-custodial representative on the child support committee. *Blackston v. State*, 30 F.3d 117, (11th Cir. 1994).

The state receives federal funds in its operation of the Title IV-D program. Because the state receives enormous financial incentives, the respondents must defeat the petitioner's claims with every frivolous means at their disposal. The respondents, in their brief, will insult this Honorable Court's intelligence by suggesting that the petitioner's claims are barred under the Rooker/Feldman Doctrine. The respondents will assume that this Honorable Court can not distinguish truth from fiction nor be able to ascertain that Heffler and Gilbert were not a party in any state court proceeding, involving the petitioner.

V. The Decision of the U. S. District Court Conflicts with this Court's Expressly Postulated Rule that the Action of an Officer Affecting Property Claimed by a Plaintiff Can be

Made the Basis of a Suit For Specific Relief.

Cutting through the tangle of previous decisions, the Court expressly postulated the rule that the action of an officer affecting property claimed by a plaintiff can be made the basis of a suit for specific relief against the officer as an individual when the officer's action is "not within the officer's statutory powers or, if within those powers, the powers, or their exercise in the particular case, are constitutionally void." *Malone v. Bowdoin*, 369 U.S. 643, 647 (1962).

The ultra vires action by Gilbert was completely beyond his authority. Gilbert, in refusing to return the illegally withheld property to Blackston, acted outside the scope of his statutory powers. Gilbert's "custom and policy" violates due process requirements, rudimentary to notice and hearing before property can be withheld and constitutes an "illegal taking."

Dealing with these points, the illegal taking of Blackston's property can legally give rise to the inference that a permanent taking is intended; thus, there is an intent not to

return the property to its owner. Cf. *Dugan v. Rank*, 372 U. S. 609 (1963).

VI. The Procedures and Decision in the U. S. District Court constitutes a "Dastardly Scheme" to Undermine a Pro Se Litigants Case, Thereby Denying Due Process.

A courtroom full of spectators witnessed the bias and prejudice of the District Court Judge on April 23, 1993. Later in the process, the District Court destroyed court documents and allowed false evidence into the facts of the case. Important dates and facts, necessary to the understanding of the case were deliberately left out of the Court's decisions. (App. infra. 18a-22a). The Court destroyed the transcript of the hearing, held on April 23, 1993, and when Blackston attempted to submit his "Statement of the Proceeding, pursuant to Fed. R. Civ. Proc. Rule 10(d), the Court refused to approve the statement or allow a hearing on the issue. Petitioner cannot pursue or adequately present his case without a transcript or Statement of the Proceedings.

The Court further refused to serve all Orders on the petitioner and invented a gross falsehood to justify failing to serve her Orders on the Pro Se petitioner.[1] The Court stated, "The Supervisor opined that the docket clerk must have been docketing information in this case when the system went down. The malfunction somehow changed plaintiff's status from 'pro se' to the status of 'no attorney'." (App, infra, 6a).[2]

Even the appearance of "Bias and prejudice" cannot be tolerated in the Courts of America. The above describes some of the most heinous crimes that could be perpetrated against a

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[1] The Court reverse engineered or gerrymandered a computer program to justify her attempts to destroy the petitioner's case, including appeal, knowing that time limits cannot be extended to file an appeal.

[2] The Clerk's duty is to serve all papers on parties with "no attorney" and parties appearing "pro se." What is the difference?

pro se litigant. What better way to destroy a valid cause of action that to sit in judgment harboring ill feelings against that person because he happens to stand for something different and that "something different" simply involves a father trying to protect his family's integrity. The District Court's refusal to recuse herself is inconsistent with the principles in 28 U.S.C. § 455 and 28 U.S.C. § 144 and *Berger v. United States*, 255 U.S. 22 (1921). A judge asked to recuse himself is relieved from the delicate and trying duty of deciding upon the question of his own disqualification. *Berger v. United States*, 255 U.S. 22, 32 (1921). Any reasonable person would think the District Court's actions were prejudicial. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 873 (1988).

The District Court admits the improprieties of her conduct relevant to this case. (App. infra, 9a). Additionally, she insisted on sitting in judgment in her own case and refused to step aside in favor of an unbiased adjudicator. The District Court applied unfair and unreasonable standards to Blackston,

a pro se petitioner, untrained in the eccentrics of complicated legal procedures.

For the purposes of a motion to dismiss, the material allegations of the complaint are taken as admitted. See, e.g., *Walker Process Equip., Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172, 174-175 (1965). And, the complaint is to be liberally construed in favor of plaintiff. See Fed. R. Civ. Proc. 8(f); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). This Court has stated, "Pro se complaints are given more leeway than complaints submitted by litigants represented by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Nowhere, in the District Court's Orders, does she acknowledge that Blackston is appearing pro se. The District Court's decision is contrary to the above and deliberately confuses the facts and intermingles personal feelings into this case to completely confound the issues, thereby denying the petitioner due process. Any given set of facts that make up a § 1983 claim can be "misinterpreted and ignored" or "twisted and distorted" to fit a legal standard.

The old axiom, "actions speak louder than words," truly illustrate the District Court's conduct in this case. Her answers simply do not portray the true events that occurred in this case.

On a grand scale, the personal prejudices and public excitement that child support generates, deny non-custodial mothers and fathers an opportunity for a fair and reasonable hearing in Alabama and destroys the parents ability to maintain family integrity.

A predisposition can be wrongful or inappropriate. A favorable or unfavorable predisposition can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. The District Court displayed deep-seated and unequivocal antagonism that would render fair judgment impossible, including stereotyping "disgruntled fathers" in Alabama and perpetrating a "dastardly scheme" to deny

petitioner due process[3]. Cf. *Liteky v. United States*, 114 S.Ct. 1147 (1994).

CONCLUSION

Nowhere does the legal system deal with middle-class America's two biggest legal problems: that 150 million citizens can not afford the legal information they need in their day-to-day lives, and that our civil court system simply does not work to resolve the average person's disputes.

Take a look for yourself. In real life, where does the legal system try to provide legal help for a single mother trying to get a restraining order against a violent ex-husband? Where does it make it easier for a family, trying to transfer a deceased parent's property to the kids, to avoid the cost and delay of

---

[3] The District Court judge stated, "Your problem is that you are just part of a group of disgruntled fathers." Because the transcript was destroyed, petitioner is denied a fair opportunity to show the District Court's bias and prejudice.

probate? How does it help a divorced father petition a court to increase the time he can spend visiting his five-year old daughter?

The Courts of America fail the common people and someone takes the law into their own hands and murders a lawyer or judge. A judge in Alabama is caught taking a bribe from criminals and later commits suicide to avoid punishment. Some lawyers and judges in Alabama make approximately sixteen to eighty times the hourly wage of the average citizen - $125.00 per hour or $795,000 per fiscal year..

Every faction of government in America holds secret and clandestine meetings to decide the rules and laws of government. The people try to change the power structure at the voting booth with a mass defection from the Democratic Party.

Evil and corrupt prosecutors perpetrate lies and false evidence in court, protected by immunity doctrines. Judicial decisions reek with bias and prejudice, yet each judge has the power to decide his/her own fate.

A misguided citizen, loses hope, channels his emotions in the wrong direction and bombs a federal building, killing innocent people. Citizens' militia appears in every state to combat, what they see, as a complete brake down of government. The fear of an overbearing government, protected by an out of control court system, subsumes every citizen.

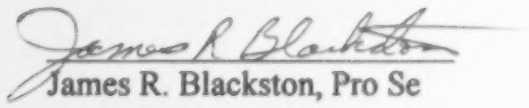
Truth, honestly and integrity is barren in most of America's courts and most have turned away from God. Judge made laws are in place in America today to allow drug lords to completely take over the country. That is America today.

This appeal comes to this Honorable Court fortified with assumptions, outright lies and misrepresentations of the truth. What checks and balances prevent the lower courts from deliberately destroying a petitioner's case and appeal chances? Furthermore, the appeal comes too late. Blackston and his children have forever been scarred by the above chain of events.

Let us hear the conclusion of the whole matter: Fear

God, and keep his commandments: for this is the whole duty of man. For God shall bring every work into judgment, with every secret thing, whether it be good, or whether it be evil. *Ecclesiastes* 12:13-14. For the above reasons and more, the Writ of Certiorari should be granted.

Respectfully submitted



James R. Blackston, Pro Se
Route 7, Box 410-B
Jasper, Al 35501-8779
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Appendix A - Mandate of the U.S. Court of Appeals for the Eleventh Circuit - Dated May 18, 1995

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 93- 7034

Non-Argument Calendar

D.C. Docket No. CV-92-B-2360-J

James Blackston,

Plaintiff-Appellant

versus

Paul Heffler, Andy Hornsby; Ronald Gilbert, Sam Sullivan; Myra Blackston Herron; Vinita B. Thompson,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Alabama

(May 18, 1995)

Before KRAVITCH, EDMONDSON and COX, Circuit Judges,

PER CURIAM: AFFIRMED. See 11th Cir. Rule 36-1.

"Costs taxed against plaintiff-appellant."

Judgment Entered: May 18, 1995

For the Court: Miguel J. Cortez, Clerk

ISSUED AS MANDATE: 6/20/95

Appendix B - Order of the U.S. District Court, Northern District of Alabama - Dated November 01, 1993

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

JASPER DIVISION

JAMES BLACKSTON	}	
	}	Case No.
Plaintiff,	}	
	}	92-B-2360-J
SYLVESTER ANTON, PAUL HEFFLER,	}	
	}	
CHARLES CLEVELAND,	}	
	}	
RONALD GILBERT, SAM SULLIVAN,	}	
	}	
and MYRA (BLACKSTON) HERRON,	}	
	}	
Defendants.	}	

ORDER

In accordance with the accompanying memorandum opinion, it is hereby ORDERED that the Motion to Amend or Reconsider and Motion for Rehearing and Supporting Memorandum filed by plaintiff on October 4,1993 is DENIED.

DONE this 1st day of November, 1993.

s/ SHARON LOVELACE BLACKBURN

United States District Judge

Appendix C - Opinion of the U.S. District Court, Northern District of Alabama - Dated November 01, 1993

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

JASPER DIVISION

JAMES BLACKSTON	}	
	}	Case No.
Plaintiff,	}	
	}	92-B-2360-J
SYLVESTER ANTON, PAUL HEFFLER,	}	
	}	
CHARLES CLEVELAND,	}	
	}	
RONALD GILBERT, SAM SULLIVAN,	}	
	}	
and MYRA (BLACKSTON) HERRON,	}	
	}	
Defendants.	}	

MEMORANDUM OPINION

This matter is before the court on the Motion to Amend or Reconsider and Motion for Rehearing and Supporting Memorandum filed October 4, 1993 by plaintiff James Blackston. Blackston requests that this court give plaintiff a new hearing and assign "an impartial and unbiased judge to

adjudicate this cause." (Plaintiff's motion, p. 10).

Plaintiff argues that the court did not intend to transmit the Memorandum Opinion and five Orders rendered between September 20 and September 24, 1993. The court was unaware until October 5, 1993, that plaintiff had not received the above-mentioned Orders. On October 5, 1993, the court received a memorandum from the Supervisor of Operations in the Office of the Clerk of the Court advising that the computer program which generates mailing labels for the parties had crashed during the first week of April, 1993. The Supervisor opined that the docket clerk must have been docketing information in this case when the system went down. The malfunction somehow changed plaintiffs status from 'pro se' to the status of 'no attorney'; therefore, no mailing label was generated for plaintiff when the clerk's office mailed the orders. The court regrets that plaintiff did not receive his service copy of the Orders; however, the clerk's office has advised the undersigned that plaintiff obtained copies of the Orders on Friday, October 1,

1993. No time limits expired before plaintiff received copies of the Orders; thus, the court fails to find that plaintiff has been prejudiced in any way by the computer problem.

Plaintiff argues that "Judge Blackburn is out of order in dismissing plaintiffs Complaint and Motion for Recusal" because "[a] judge asked to recuse herself has no other or further duty to perform than that prescribed in § 20 of the Judicial Code." (Plaintiffs Motion, p. 5). As set out in the court's Order entered on September 20, 1993, denying plaintiffs Motion for Recusal, the court examined the motion for recusal under each section of 28 U.S.C. § 455. The court acknowledged that disqualification was mandatory under section 455(b), but the court was of the opinion that this case did not fall under any provision of that section. Plain tiff argues in his pending motion that the undersigned "exhibits extreme bias and prejudice against plaintiff." (Plaintiffs Motion, p. 4). The court assumes plaintiff is attempting to apply section 455(b)(l). In the September 20, 1993, order, the court stated: "The undersigned

most certainly harbors 'no personal bias or prejudice' against plaintiff in this matter." (Order, p. 3). In considering recusal under section 455(h)(l), "the general rule is that bias sufficient to disqualify a judge must stem from extrajudicial sources. Whitehurst v. Wright, 592 F.2d 834, 838 (5th Cir. 1979). The remarks made by the undersigned were based solely on impressions obtained from the pleadings and oral arguments "and were not part of a prejudicial attitude maintained by the judge prior to the institution of the proceeding." *See id.* An exception exists "'where such pervasive bias and prejudice is shown by otherwise judicial conduct as would constitute bias against a party.'" Id. (citation omitted). The court does not believe plaintiff has demonstrated that the court has shown "such pervasive bias and prejudice." In *Whitehurst,* the court found that the trial judge's remark that "'it bothers me a good deal that people get sued for doing their duty'" did not "evidence any bias, let alone the 'pervasive bias' that must be shown to disqualify a judge for his statements made in a

judicial setting. Id. at 837-38. Certainly, the comments made by the undersigned do not demonstrate any bias against the plaintiff.[4]

Plaintiff also alleges that the undersigned "refers to the plaintiff in her Order as an 'unreasonable man - that a reasonable man would not harbor doubts about the judge's impartiality.'" (Plaintiffs Motion, p. 7). The language plaintiff refers to is found on page 3 of the Order entered September 20, 1993. There, the court is quoting verbatim from an Eleventh

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[4] Plaintiff also argues that bias and prejudice is evidenced by the undersigned's use of "[sic] phrases." *(See* Plaintiff's Motion, pp. 6-7). The court certainly was not "implying plaintiff is stupid and uneducated, incapable of spelling and writing intelligently." *(See id.)* The court was utilizing "[sic]" in accordance with Blue Book Rule 5.2 (15th ed.), as it routinely does when quoting from documents filed by attorneys which contain grammatical or typographical errors,

Circuit case the standard utilized in disqualification. The court was not implying that plaintiff is an "unreasonable man."

The plaintiff also contends that the "court erred in dismissing the complaint and motions based on bare bones pleading without a reasonable opportunity to obtain all the evidence. Plaintiff argues that the court "actually hindered the plaintiff from obtaining evidence by refusing to assist plaintiff with numerous attempts at discovery," and that "[d]isposition of all motions filed by plaintiff was delayed for almost a year." (Plaintiff's Motion, p. 2). Plaintiffs numerous attempts at discovery consist of the following:

1. Plaintiff's Motion to Compel Discovery filed on December 28, 1992. This motion was filed in response to the Motion to Stay Discovery filed by Defendants Cleveland and Gilbert. The ground raised by defendants for the Motion to Stay Discovery was that the defendants were entitled to the immunity defense. This issue could not be resolved without an in-depth examination of the allegations of the Complaint and

the applicable law. Therefore, the court did not rule on either plaintiff's or defendants' motion.

2. Plaintiff's Motion for Discovery Conference filed on August 11, 1993. The court was researching the plaintiff's claims and defendants' arguments (especially the immunity defense); therefore, it did not rule.

3. Plaintiffs Motion for Discovery Conference filed on September 23, 1993. The court found it unnecessary to rule on this motion because the undersigned had signed an Order dismissing plaintiffs claims, Said Order was entered on September 24, 1993.

As to the ruling on the motions to dismiss filed by defendants, the delay was partly because of the court's pressing docket and partly because of the many claims plaintiff asserted in his complaint. Because of the numerous parties and issues involved in this case, the court spent a great deal of time researching and writing the Memorandum Opinion entered on September 24, 1993.

Plaintiff quotes from *Due v. Tallahassee Theatres, Inc.*, 333 F.2d 630, 631 n.1 (5th Cir. 1964), in support of his argument that his complaint should not have been dismissed "on bare bones pleading." However, the next sentence of the quoted passage states that "'a motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim.'" Due, 333 F.2d at 631 n.1 (emphasis added)(citations omitted). As set out in the Memorandum Opinion and Order entered on September 24, 1993, the court found that plaintiff would not be entitled to relief under any facts which could be proved in support of his federal claims. The court did not reach the merits of the state claims; rather, the court dismissed the state claims without prejudice under 28 U.S.C. § 1367. In his motion, plaintiff has stated no

reasons to lead the court to believe its ruling was in error.

CONCLUSION

In accordance with the foregoing, the undersigned finds that the Motion to Amend or Reconsider and Motion for Rehearing and Supporting Memorandum is due to be denied. The court will enter an appropriate order contemporaneously herewith.

DONE this 1st day of November, 1993.

s/ SHARON LOVELACE BLACKBURN

United States District Judge

Appendix D - Order of the U.S. District Court, Northern District of Alabama - Dated September 24, 1993

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

JASPER DIVISION

JAMES BLACKSTON	}	
	}	
Plaintiff,	}	Case No.
	}	92-B-2360-J
SYLVESTER ANTON, PAUL HEFFLER,	}	
	}	
CHARLES CLEVELAND,	}	
	}	
RONALD GILBERT, SAM SULLIVAN,	}	
	}	
and MYRA (BLACKSTON) HERRON,	}	
	}	
Defendants.	}	

ORDER

In accordance with the accompanying Memorandum Opinion, the court hereby orders that the following motions are GRANTED: Motion to Dismiss, for Judgment on the Pleadings, or In the Alternative, For Full or Partial Summary Judgment by

Defendant Paul Heffler filed November 13,1992; Motion to Dismiss, For Judgment on the Pleadings, or In the Alternative, For Full or Partial Summary Judgment by Defendants Charles Cleveland and Ronald Gilbert filed November 3,1992; Motion to Dismiss and Answer to Plaintiff's Complaint filed on October 16, 1992 (on behalf of Myra Blackston Herron); Motion to Dismiss and Answer to Plaintiff's Complaint filed on October 16,1992 (on behalf of Sam Sullivan); and Motion to Dismiss, For Judgment on the Pleadings, or in the Alternative for Full or Partial Summary Judgment on Behalf of Defendant Thompson filed May 3,1993.

All state law claims, including malicious prosecution, intentional infliction of emotional distress, interfering with family relations, invasion of privacy, fraud and deceit, and civil conspiracy are DISMISSED WITHOUT PREJUDICE. All other claims are DISMISSED WITH PREJUDICE. Costs are taxed against the plaintiff.

DONE this 24th day of September, 1993.

s/ SHARON LOVELACE BLACKBURN

United States District Judge

Appendix E - Opinion of the U.S. District Court, Northern District of Alabama - Dated September 24, 1993

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

JASPER DIVISION

JAMES BLACKSTON	}	
	}	
Plaintiff,	}	CASE NO.
	}	92-B-2360-J
SYLVESTER ANTON, PAUL HEFFLER,	}	
	}	
CHARLES CLEVELAND,	}	
	}	
RONALD GILBERT, SAM SULLIVAN,	}	
	}	
and MYRA (BLACKSTON) HERRON,	}	
	}	
Defendants.	}	

MEMORANDUM OPINION

This case is before the court on the following: Motion to Dismiss, for Judgment on the Pleadings, or In the Alternative, For Full or Partial Summary Judgment by Defendant Paul Heffler filed November 13, 1992; Motion to Dismiss, For Judgment on the Pleadings, or In the Alternative,

For Full or Partial Summary Judgment by Defendants Charles Cleveland and Ronald Gilbert filed November 3, 1992; Motion to Dismiss and Answer to Plaintiffs Complaint filed on October 16,1992 (on behalf of Myra Blackston Herron); Motion to Dismiss and Answer to Plaintiffs Complaint filed on October 16,1992 (on behalf of Sam Sullivan); and Motion to Dismiss, For Judgment on the Pleadings, or in the Alternative for Full or Partial Summary Judgment on Behalf of Defendant Thompson filed May 3,1993. Oral argument was held on April 23,1993. Upon thorough consideration of the memoranda and the evidentiary submissions filed in support of and in opposition to the above, the court determines that the defendants' motions are due to be granted.

FACTUAL SUMMARY

Plaintiff James Blackston was divorced from his wife, defendant Myra Blackston, in 1987. Myra Blackston was granted custody of the three minor children, and Mr. Blackston was ordered to pay $600.00 per month as child support. In

1988, Myra Blackston applied with the Walker County DHR for child support services pursuant to 42 U.S.C. §§ 651, et seq. and Ala. Code § 38-10-1, *et seq.* Mrs. Blackston assigned her rights to child support to DHR as allowed under 45 C.F.R. § 302.33(e). DHR then began enforcement of support under state law. The location for payment of child support was changed from the Walker County Circuit Clerk's Office to the Walker County DHR. Mr. Blackston challenged this change in collection sites as a violation of due process. DHR's actions were upheld in the Circuit Court and by the Court of Civil Appeals.

In October of 1990, Mr. Blackston filed a petition to modify the divorce decree seeking joint custody. In December of 1990, the State of Alabama on behalf of Myra Blackston filed a contempt petition for nonpayment of child support and an income withholding order for current support against Mr. Blackston, alleging that he was $664.00 in arrears in child support. Mr. Blackston moved to quash the income withholding

order, claiming it was entered without proper notice and in violation of state law. He also filed a counter petition alleging that the child support contempt petition had been filed to circumvent the other complaints pending against him in the Circuit Court, that the Office of Child Support Enforcement through its attorney was a party to this willful assault on the honesty and integrity of a law abiding citizen, and that Mrs. Blackston's actions attempted to defeat his right to pursue a child support case pending before the court of Civil Appeals and the custody case in Circuit Court. Blackston sought compensatory and punitive damages for the allegedly tortious conduct against him.

The Circuit Court entered a decree on May 17,1991. The court denied Mr. Blackston's petition for joint custody, refused to hold either party in contempt, awarded Mr. Blackston an offset of $2,200.00 for support of the oldest child, and ordered Mr. Blackston to pay any outstanding medical bills for the minor children within 30 days. The Circuit Court's

decision was upheld on appeal.

Mr. Blackston filed suit in this court against the following individuals:

Sylvester Anton, Clerk of the Circuit Court of Walker County, who is deceased (Mr. Blackston substituted Viniti Thompson as his successor in office); Charles Cleveland, who is Commissioner of the Walker County Department of Human Resources; Paul Heffler, Assistant District Attorney for Walker County; Sam Sullivan, an attorney in Jasper; and Myra Blackston Herron, Mr. Blackston's former wife.

Mr. Blackston has alleged several federal and state claims against the defendants, including violation of the right to due process; violation of Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A; violation of 42 U.S.C. §§ 1983, 1985, 1986 and 1988; violation of 42 U.S.C. § 666(b); violation of 45 C.F.R. § 303.100; malicious prosecution; intentional infliction of emotional distress; interfering with family relations; invasion of privacy; fraud and deceit; and civil conspiracy. The plaintiff

request both monetary damages and injunctive relief.

CLAIMS AGAINST HEFFLER, CLEVELAND, GILBERT AND THOMPSON

Eleventh Amendment Immunity

The claims for monetary damages against Defendants Heffler, Cleveland, Gilbert, and Thompson in their official capacities are due to be dismissed. The Eleventh Circuit bars suits against state officials when "the state is a real, substantial party in interest." *Ford Motor Co. v. Dep't of Treasury*, 323 U.S. 439 (1945). See also *Kaimowitz v. The Florida Bar*, 996 F.2d 1151(11th Cir. 1993) ("The (Eleventh Amendment applies even when a state is not named as a party of record, if for all practical purposes the action is against the state.") (quoting *Schopler v. Bliss, 903* F.2d 1373, 1378 (11th Cir. 1990)). Plaintiff's allegations against defendants Heffler, Cleveland, Gilbert, and Thompson describe actions that were taken in the scope of their employment solely in their official capacities as employees of the State.

Furthermore, in *Will v. Michigan Dep't of State Police,* the Supreme Court held that state officials acting in their official capacities are outside the class of persons subject to liability under § 1983. 491 U.S. 38, 109 S.Ct. 2304 (1989). A suit against a state official in his official capacity should be treated as a suit against the State. Hafer v. *Melo,* 112 5. Ct. 358, 361(1991). States are not persons subject to liability under § 1983. Neither, then, are state officials sued for monetary relief in their official capacities subject to liability under § 1983. *Will,* 491 U.S. at 71, 109 5. Ct. at 2311; Hafer, 112 5. Ct. at 362. However, in *Will,* the Court noted that a State official in his official capacity when sued for injunctive relief, would be a person under § 1983 because "official capacity actions for prospective relief are not treated as actions against the State." *Will,* 491 U.S. 38,109 5. Ct. at 2311 n.10.

Therefore, all claims against defendants Heffler, Cleveland, Gilbert, and Thompson in their official capacities for monetary relief are barred by the Eleventh Amendment, and

thus are due to be dismissed.

CLAIMS OF INJUNCTIVE RELIEF

The injunctive relief requested by the plaintiff consists of:

2. Declaratory and injunctive relief prohibiting Defendants from violating the Plaintiffs constitutionally protected rights; and restoration of Plaintiff s joint physical and legal custody of the minor children.

3 Require the Walker County Department of Human Resources refund all over payments of child support and filing fees, made by the father immediately.

4. Require that Walker County Department of Human Resources remove the illegal and unwarranted Income Withholding Order immediately. Complaint, p. 17.

These claims have been adjudicated by the state court. *See* Motion to Dissolve the Order for Income Withholding or Motion to Strike or Motion to Quash and Answer, and Counter petition - attached to defendants' brief; *Blackston* v. *State ax*

rel. Blackston, 585 So. 2d 58 (Ala. Civ. App. 1991); *Blackston v. Blackston*, *607* So. 2d 1262 (Ala. Civ. App. 1991).

Under the *Rooker-Feldman* Doctrine, this court lacks jurisdiction to review final decisions of a state court of competent jurisdiction. Such review rests solely in the United States Supreme Court. *Liedel* v. *Juvenile Court of Madison County*, 891 F.2d 1542,1545 (11th Cir. 1990). Further, the Eleventh Circuit has held that this court "may not decide federal issues that are 'inextricably intertwined' with a state court's judgment. This is true even if the plaintiff failed to raise the federal issue in the state court." Id. at 1545 (citing *Wood* v. *Orange County*, 715 F.2d 1543, 1546 (11th Cir. 1983), *Cert. denied*, 467 U.S. 1210, 104 S. Ct. 2398 (1984))[5]

Mr. Blackston was afforded the opportunity to raise

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[5] An exception does exist where the plaintiff had no reasonable opportunity to raise the issue in state court. Liedel, 891 F.2d at 1545, n.4 (citing Wood, 715 F.2d at 1547).

constitutional issues in state court and, in fact, did raise several constitutional claims. *See* Motion to Dissolve the Order for Income Withholding or Motion to Strike or Motion to Quash and Answer, and Counter petition - attached to defendants' brief; *Blackston v. State ex rel. Blackston*, *385* So. 2d 58 (Ala. Civ. App. 1991); *Blackston v. Blackston*, 607 So. 2d 1262 (Ala. Civ. App. 1991). Mr. Blackston argues that he is not trying to relitigate the issues heard in the state courts. He claims he is only seeking damages from individuals and state officers that used the courts of Alabama, under color of state law, to violate his basic constitutional rights by refusing to return illegally held property and by interfering with his ability to maintain family integrity.

The court finds that although plaintiff has attempted to couch his complaint in constitutional terms, it is the same rose with another name. Since these claims relate specifically to Mr. Blackston's claims adjudicated in previous cases, The court must dismiss for lack of jurisdiction.

The state courts have issued a final decision on plaintiffs requested injunctive relief enumerated above. Therefore, the court finds it lacks jurisdiction to review these claims; thus, the claims of injunctive relief against defendants Heffler, Cleveland, Gilbert, and Thompson are due to be dismissed.

§ 1983 SUIT BASED ON PERSONAL CAPACITY

The Eleventh Amendment does not bar plaintiff from suing defendants in their personal capacities. *Lundgren v. McDaniel, 814* F.2d 600, 603 (11th Cir. 1987)(citation omitted). Although plaintiff has not specifically pled claims against defendants Heffler, Cleveland, Gilbert, and Thompson in their personal capacity, the Eleventh Circuit has stated that is not determinative. Id. at 604. To the extent plaintiff has sued defendants in their personal capacities, the defendants "may assert personal immunity defenses such as objectively reasonable reliance on existing law." *Hafer*, 112 5. Ct. at 362 (citation omitted). Defendants Heffler, Cleveland, Gilbert, and

Thompson are immune under qualified good faith immunity for plaintiffs § 1983 claims because they did not violate any "clearly established" constitutional right of plaintiff. They enforced a valid child support order issued by a state court. Furthermore, neither Cleveland, Gilbert, nor Thompson took any direct action in this matter. Heffler did take direct action, but he is entitled to prosecutorial immunity (see discussion below).

Plaintiff claims defendants lose their entitlement to qualified immunity if the law clearly proscribes the conduct they take. See *Davis v. Scherer*, 468 U.S. 183, 104 5. Ct. 3012, 3017 (1984). plaintiff argues that statutes and regulations (42. U.S.C. § 666(b) and 45 C.F.R. § 303. 100(a)(9-10)) clearly state that withholding orders must be terminated and refunds made of over-payments.

Although generally violation of a federal statute is cognizable under 42 U.S.C. § 1983, there are two exceptions: (1) If Congress has foreclosed private enforcement in the

enactment of the statute; or (2) if Congress has not created enforceable rights in the relevant statutory provisions. *Wehunt v. Ledbetter*, 875 F.2d 1558,1563(11th Cir.), cert. denied, 494 U.S. 1027, 110 5. Ct. 1472 (1989)(citations omitted).

In order to determine whether a private cause of action exists, the U.S. Supreme Court has articulated four factors: (1) whether the plaintiff is a member of the class for whose especial benefit the statute was enacted; (2) whether there is any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; (3) whether it is consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff; and (4) whether the cause of action is one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law. *Cort v. Ash*, 422 U.S. 66, 78, 95 5. Ct. 2080 (1975).

42 U.S.C. § 666 is a portion of the Social Security Act

located in Title IV-D of the Act. The Eleventh Circuit Court of Appeals has applied the above factors to Title IV-D of the Act and held that Title IV-D of the Act does not create an enforceable right for the plaintiff. *Wehunt*, 875 F.2d at 1363.

The court finds that because 42 U.S.C. § 666 does not create an enforceable right for the plaintiff, plaintiffs claims under 42 U.S.C. § 1983 are due to be dismissed.

Alternatively, defendants Heffler, Cleveland, Gilbert, and Thompson are due to be dismissed on the following grounds:

Prosecutorial Immunity

Additionally, Assistant District Attorney Paul Heffler is entitled to absolute judicial immunity on the grounds that his actions in bringing State ex rel. Myra Blackston are protected as part of his prosecutorial function. A review of the complaint reveals that each of the possible claims asserted against Heffler is intimately involved with the judicial process. See *Burns v. Reed*, 111 5. Ct. 1934 (1991). Clearly, Heffler is immune from

suit under § 1983 for his role in bringing the above referenced action.

Plaintiff relies on two cases in which courts found child abuse investigators and child protective service workers were not entitled to prosecutorial immunity because they were acting in their roles as investigators in going to the plaintiffs' homes and questioning and seizing their children. *Hodorowski v. Ray*, 844 F.2d 1210 (5th Cir. 1988); *Robison v. Via*, 821 F.2d 913, 917 (2d Cir. 1987). These cases are inapposite.

For these reasons, all claims against defendant Heffler are due to be dismissed.

CLAIMS AGAINST ALL DEFENDANTS

JURISDICTION

As discussed above on pages 5-6 of this memorandum Opinion, the *Rooker-Feldman* Doctrine prohibits federal district courts from reviewing final decisions of state courts. In plaintiffs appeals in *Blackston v. State ex rel. Blackston*, 585 So. 2d 58 (Ala. Civ. App. 1991) and *Blackston v. Blackston*,

607 So. 2d 1262 (Ala. Civ. App. 1991), he raised the following issues in his brief:

First Appeal:

1. Did the trial court err in finding that wife's assignment of rights does not constitute a modification of the original divorce decree?

2. Did trial court err in finding that husband's constitutional rights to due process were not violated?

3. Did trial court err in finding that husband received adequate notice?

4. Did trial court err in finding that the assignment of right to support collection was properly applied to husband in that the present procedures for support collection was not being enforce [sic] under the plan call (sic) for under the Social Security Act?

5. Did trial court err in applying Code of Alabama 1975, § 38-10-3(b) in that it deals with income withholding when income withholding was not in force in this case?

6. Did trial court err in finding it necessary to substitute a different set of procedures for child support collection when the ones in use were adequate?

7. Did husband receive fair and just treatment as required under due

process requirements?

Second Appeal:

1. Did the trial court err in finding that the petition heretofore filed by father, James Blackston, for joint custody on September 28,1990, be and the same is hereby denied.

2. Did the trial court err in finding that the mother be and she is not in contempt of court of the Rule NISI filed by father, James Blackston, on October 17, 1990.

3. Did the trial court err in finding that it was not necessary to order mother to inform father of the minor children's telephone number.

4. Did the trial court err in disallowing testimony concerning the Motion for Relief from Income Withholding

filed on behalf of father, under A.R.C.P. Rule 60(b).

5 Did the trial court err in disallowing testimony concerning the Motion for Relief from Income Withholding and Income Withholding Order.

Memorandum Brief in Support of Defendants' Motion to Dismiss, for Judgment on the Pleadings, or in the Alternative, For Full or partial Summary Judgment by Defendants Charles G. Cleveland and Ronald Gilbert, pp. 12-13.

The court finds that the plaintiff's claims in the instant case are "inextricably intertwined" with a state court's judgment. *Liedel*, 891 F.2d at 1545 (citing Wood, 715 F.2d at 1546). Therefore, plaintiffs case must be dismissed.

42 U.S.C. §§ 1985, 1986, and 1988

Plaintiff has failed to state a claim for conspiracy to violate his civil rights under § 1985. Mr. Blackston alleges in his brief that he made "valid allegations" that he was denied an opportunity to present his case concerning the Income Withholding Order. He also states that he "explained (in his

complaint) in great detail, the coercion and intimidation and fraudulent conduct of the defendants." He claims he has stated a "valid class based, invidiously discriminatory animus behind the conspirator's action." Section 1985(1) provides a cause of action for conspiracy to interfere with civil rights by preventing an officer from performing his duty. Plaintiff's complaint clearly fails on this count. Section 1985(2) provides a cause of action for conspiracy to interfere with civil rights by obstructing justice by intimidating a party, witness or juror in a federal or state court. Under this provision, plaintiff must allege that defendants "by force, intimidation or threat" conspired to deter him from attending or testifying to a matter pending in court, fully, freely, and truthfully, or injured plaintiff by his having so attended and testified in court. If this is what plaintiff is alleging, this claim is due to be dismissed because plaintiff was permitted to proceed to trial on all issues raised in his state court pleadings, and he appealed to the Alabama Court of Civil Appeals. *See* Motion to Dissolve the Order for Income

Withholding or Motion to Strike or Motion to Quash and Answer, and Counter petition - attached to defendants' brief; *Blackston v. State ex rel. Blackston*, 585 So. 2d 58 (Ala. Civ. App. 1991); *Blackston v. Blackston*, 601 So. 2d 1262 (Ala. Civ. App. 1991).

Most probably, Mr. Blackston is attempting to allege a claim under § 1985(3), which establishes a private right of recovery from persons who conspire, either directly or indirectly, to deprive a person or class of persons of the equal protection of the law or of equal privileges and immunities under the law. Mr. Blackston argues in his brief that "a conspiracy existed to deprive the Plaintiff his constitutional rights and custody and visitation with his children. Said depravation (sic] and conspiracy continues far beyond the court cases counsel asserts in their brief." (Plaintiffs Brief, p. 11).

The court finds that Mr. Blackston is not a person or class protected under § 1985. To be protected from an invidiously discriminatory conspiracy, there must be a person

or a class founded upon race or some other inherent personal characteristic. See, e.g., *McLean v. Int'l Harvester Co.*, 817 F.2d 1214,1218 (5th Cir. 1987. The court has located no case law stating that noncustodial fathers are such a class.

Therefore, plaintiffs claims under 42 U.S.C. §§ 1985,1986, and 1988 are DISMISSED as to all defendants.

42 U.S.C. § 666(b) and 45 C.F.R. § 303.100

Mr. Blackston alleges that defendants illegally confiscated his property and refuse to refund child support payments to him in violation of 42 U.S.C. § 666(b) and 45 C.F.R. § 303.100. 42 U.S.C. § 666(b) is entitled "Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement." It states that "each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary (of Health and Human Services) to increase the effectiveness of the program which the State administers under this part." Subsection b, under which plaintiff sues, is entitled

"Withholding from income of amounts payable as support," and provides requirements for the procedures for child support enforcement by the states. The specific requirement which plaintiff claims has been violated is "(10) The State must have procedures for promptly refunding to absent parents amounts which have been improperly withheld." This section provides absolutely no private cause of action. Wehunt, 875 F.2d at 1565. Since plaintiff cannot state any claim under this section, the plaintiffs claim under 42 U.S.C. § 666(b) and 45 C.F.R. § 303.100 is due to be dismissed.

Parental Kidnapping Prevention Act

Plaintiff maintains that the defendants have directly violated the Parental Kidnapping Prevention Act (hereinafter "PKPA"), 28 U.S.C. § 1738A. He does not give a reason for this allegation. He claims in Count Four of the Complaint that Myra Herron denied plaintiff his right to custody and visitation with his children in violation of the "PKPA" by removing the minor children from the state of Alabama. Plaintiff wholly fails to

state a claim under the "PKPA". First, he does not allege a time frame in which Mrs. Herron removed the children from Alabama, but she clearly lives here now, as plaintiff served her in Oakman, Alabama (in Walker County).

Furthermore, the "PKPA" was enacted to prevent jurisdictional conflicts in competition over child custody, and in particular, to deter parents from abducting children for purposes of obtaining custody awards. The Act states: "The appropriate authorities of every State shall enforce according to its terms and shall not modify . . . any child custody determination made consistently with the provisions of this section by the court of another State." Clearly, the purpose of the "PKPA" is to make the Full Faith and Credit Clause of the U.S. Constitution applicable to child custody determinations, so as to discourage forum shopping by parents. *Thompson v. Thompson*, 484 U.S. 174,108 5. Ct. 513 (1988). Mr. Blackston has simply made no allegation that Mrs. Herron took the children to another state for the purpose of getting a decree in

her favor or that Mrs. Herron undertook to enforce another state's order over the valid Alabama order. In fact, Alabama awarded Mrs. Herron custody. The "PKPA" provides no relief to a parent who merely alleges that his ex-spouse removed the children from the state to prevent his visitation rights. This allegation should be taken up in the court which entered the divorce decree and has the ability to modify and enforce the custody order.

For these reasons, plaintiffs claim under the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, is due to be dismissed.

CLAIMS AGAINST HERRON AND SULLIVAN

As discussed above on pages 5-6 and 9-10 of this Memorandum Opinion, the *Rooker-Feldman Doctrine* prohibits federal district courts from reviewing final decisions of state courts. The court finds that the claims against Myra Herron and Sam Sullivan are barred because they are "inextricably intertwined" with a state court's judgment. *Liedel*, 891 F.2d at

1545 (citing *Wood*, 715 F.2d at 1546).

Alternatively, defendants Herron and Sullivan are due to be dismissed on the following grounds;

42 U.S.C. § 1983

In 1986, the Eleventh Circuit held, "the general rule in this circuit (is] that a private individual does not act under color of state law by engaging in litigation, even in bad faith, unless that individual is compelled by state law to bring suit or is acting under the authority or pretense of authority of the state." *McDougald v. Jenson*, 786 F.2d 1465,1488-89(11th Cir.), *cert. denied*, *479* U.S. 860, 107 5. Ct. 207 (1986). McDougald was a case brought by a noncustodial father who asserted claims under the Parental Kidnapping Protection Act and § 1983 against his former wife, who had abducted their child to another state and had attempted to obtain a custody order there. The court noted one exception to the usual rule stated above, in cases where "the unlawful act was the use of a prohibitory state statute given an allegedly unconstitutional construction by the

(state] courts." The court stated that such an exception did not exist in *McDougald,* where the allegations of the father's complaint were insufficient to bring his § 1983 claim within the ambit of the exception.

Likewise, Mr. Blackston has not, and could not, state that such an exception exists here. Myra Herron and Sam Sullivan merely used the courts of the state to enforce the custody decree. Therefore, the § 1983 claims against them are due to be dismissed.

STATE CLAIMS

In addition to the above federal claims (which have now been dismissed), the plaintiff included state claims in his complaint, including malicious prosecution, intentional infliction of emotional distress, interfering with family relations, invasion of privacy, fraud and deceit, and civil conspiracy. 28 U.S.C. § 1367 provides:

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

(3) the district court has dismissed all claims over which it has original jurisdiction.

The court hereby exercises its discretion in declining to consider the pendent state law claims; thus, the plaintiffs state law claims are due to be dismissed without prejudice. *Rhyne v. Henderson County*, 973 F.2d 386, 395 (5th Cir. 1992).

DONE this 24th day of September, 1993.

s/ SHARON LOVELACE BLACKBURN

United States District Judge

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